

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

On November 9, 2010, the court issued a screening order in this case pursuant to the Prisoner Litigation Reform Act, 28 U.S.C. § 1915(e)(2), that dismissed certain of plaintiff's claims and allowed others to proceed (docket #16). Before the court is plaintiff's motion for district judge to reconsider order (docket #20).

19 Where a ruling has resulted in final judgment or order, a motion for reconsideration may be  
20 construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure  
21 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J*  
22 *Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), cert. denied 512 U.S. 1236 (1994).

Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief

1 from the operation of the judgment.

2 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
 3 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
 4 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior  
 5 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
 6 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Rule 59(e) of the Federal  
 7 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later  
 8 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should  
 9 not be granted, absent highly unusual circumstances, unless the district court is presented with newly  
 10 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."  
 11 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), quoting *McDowell v. Calderon*, 197 F.3d 1253,  
 12 1255 (9<sup>th</sup> Cir. 1999).

13 In the order of November 9, 2010, the court allowed plaintiff's Eighth Amendment medical  
 14 claims to proceed against several defendants. The court dismissed plaintiff's claims against the State  
 15 of Nevada and the Nevada Department of Corrections ("NDOC") because states and arms of the state  
 16 are not persons for the purposes of 42 U.S.C. § 1983, dismissed plaintiff's claims against NDOC  
 17 Director Skolnik because he failed to allege the director had knowledge of or participated in civil rights  
 18 violations, dismissed the Fourteenth Amendment equal protection claim because plaintiff failed to allege  
 19 that defendants discriminated against him based on race or religion or membership in a protected class,  
 20 and dismissed plaintiff's conspiracy claim because he merely alleged generally that defendants  
 21 conspired to violate his civil rights (docket #16). Plaintiff has failed to make an adequate showing under  
 22 either Rule 60(b) or 59(e) that this court's order dismissing these claims and defendants should be  
 23 reversed. **IT IS THEREFORE ORDERED** that plaintiff's motion for district judge to reconsider  
 24 order (docket #20) is **DENIED**.

25 Dated this 17th day of February, 2011.

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27 LARRY R. HICKS  
 28 UNITED STATES DISTRICT JUDGE